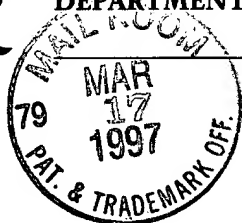




DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service



Food and Drug Administration
Rockville MD 20857

H 16

MAR 12 1997

Re: VISX Excimer Laser System
Docket No. 97E-0064

Stephen G. Kunin
Deputy Assistant Commissioner for
Patent Policy and Projects
Office of the Assistant Commissioner for Patents
U.S. Patent and Trademark Office
Crystal Park Building 2, Suite 919
Washington, D.C. 20231

Dear Mr. Kunin:

This is in regard to the application for patent term extension for U.S. Patent No. 4,718,418 filed by VISX, Incorporated under 35 U.S.C. § 156. The medical device claimed by the patent is VISX Excimer Laser System, which was assigned Premarket Approval Application (PMA) No. 910062.

A review of the Food and Drug Administration's official records indicates that this product was subject to a regulatory review period before its commercial marketing or use, as required under 35 U.S.C. § 156(a)(4). Our records also indicate that it represents the first permitted commercial marketing or use of the product, as defined under 35 U.S.C. § 156(f)(1), and interpreted by the courts in Glaxo Operations UK Ltd. v. Quigg, 706 F. Supp 1224 (E.D. Va. 1989), aff'd, 894 F. 2d 392 (Fed. Cir. 1990).

The PMA was approved on September 29, 1995, which makes the submission of the patent term extension application on November 28, 1995, timely within the meaning of 35 U.S.C. § 156(d)(1).

Should you conclude that the subject patent is eligible for patent term extension, please advise us accordingly. As required by 35 U.S.C. § 156(d)(2)(A) we will then determine the applicable regulatory review period, publish the determination in the Federal Register, and notify you of our determination.

Please let me know if we can be of further assistance.

Sincerely,

Ronald L. Wilson, Director
Health Assessment Policy Staff
Office of Health Affairs

ASSISTANT COMMISSIONER
FOR PATENTS

97 MAR 32 AM 9:14

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